SPECIAL CIVIL APPLICATION NO. 1084 OF 1986

Date of decision: 27.5.1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE,J
(27.5.1996)

Mr. J. R. Nanavati for the petitioner
Ms. Sejal Mandavia for the respondents.

C.A.V.JUDGMENT:

Heard the learned counsel for the parties.

The petitioner who is an officer of the Gujarat Education Service Class II filed this writ petition praying

for quashing and setting aside the order annexure-F dated 15th February, 1986. Under the said order the petitioner was ordered to be removed from service on the ground of alleged misconduct. The writ petition was admitted by this court on 21-2-1986 and the order annexure-F dated 15th February, 1986 was stayed up to 14-3-1986. However, by the subsequent orders the interim relief continued to operate. Learned counsel for the petitioner states that the petitioner is due to retire from service within next four months.

2. The charge against the petitioner was that during the period from December 1974 to July, 1975 as District Education Officer, Dangs (Ahwa) he had not actually travelled by first class by railway but has claimed first class fare by making false claim. This charge sheet has been given to the petitioner after about 3-1/2 years from the date of alleged misconduct. In defence the petitioner produced both oral and documentary evidence. From the side of the department no oral evidence was produced. The department has only relied on the documents, i.e. letter of the Station Superintendent, Ahmedabad, dated 25th October, 1975 and that of the Station Master, Bilimora, Western Railway. Under the aforesaid letters the Railway authorities certified that on the given dates no first class ticket has been issued from the respective railway stations, i.e. Ahmedabad and Bilimora for Bilimora and Ahmedabad respectively.

3. The learned counsel for the petitioner contended that the respondents have not considered the defence of the petitioner properly. He has not only taken positive defence but also produced documentary and oral evidence in support of his defence that looking to the long distance between Ahmedabad and Bilimora on many occasions he travelled in piece-meal and he had purchased tickets for piece-meal journey, and the certificate of the Railway authorities are of no consequence. It has next been contended by the learned counsel for the petitioner that the delay in serving the charge sheet, i.e. about 3-1/2 years, has seriously prejudiced the case of the petitioner. This plea is taken by the petitioner specifically in the reply to the charge sheet. It has been further contended by the learned counsel for the petitioner that T.A. bills which are the basis of the charges have not been produced by the department in the inquiry. These are the basic documents and nonproduction of the same has seriously prejudiced the defence of the petitioner. It has further been contended that none of the officers from the Railways has been examined by the respondents in the departmental inquiry, otherwise the petitioner could have cross-examined those witnesses and he

would have been in a position to make out his defence. Lastly the learned counsel for the petitioner contended that the disciplinary authority has not considered the question of quantum of punishment. Taking into consideration all the aspects of the case at least extreme penalty of removal from service is highly excessive and disproportionate to the guilt.

4. On the other hand Ms. Sejal Mandavia, learned counsel for the respondents, contended that the inquiry has been conducted strictly in accordance with law and the principles of natural justice. The delay is not a factor which may be considered to the extent of vitiating the departmental inquiry. So far as the production of T.A.bills is concerned, learned counsel for the respondents contended that the petitioner had not demanded the same. With regard to the contention of the petitioner that none of the officers from the Railways has been examined, learned counsel for the respondents contended that the petitioner could have produced those officers as witnesses. Learned counsel for the respondents contended that looking to the fact that the petitioner is a Class II officer, the charge that he has travelled in a class other than first class and charged for later class is a serious misconduct, and removal from service is the minimum penalty which should be imposed on him. She has also placed reliance on certain resolutions of the Government in this regard.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. It is true that delay in serving the charge sheet in case may not be vital. But in some cases delay may vitiate the charge sheet. Delay has to be considered with reference to the charges levelled against the delinquent and the possible defence taken by him. Some time the defence may depend upon the memory of the delinquent. There may be certain facts which have to be brought on record in defence on the basis of memory. By passage of time it is possible that the delinquent would have not remembered those facts. Memory is not computer which may give accurate information by pressing a button. Here is the case where the petitioner has come up with the defence which cannot be said to be illusory. Looking to the distance between the two stations, i.e. Ahmedabad and Bilimora possibly, he had travelled in piece-meal. It is too difficult to expect from the petitioner to give minute details of his journeys of the dates which are subject matter of inquiry after 3-1/2 years. The petitioner has made specific grievance on this ground. Not only at the initial stage, but also at the stage of show cause notice he raised the same grievance. The disciplinary authority has not considered this aspect of the matter. Not

only this, the grievance of the petitioner that the basic documents of the charge, i.e. T.A. bills, have not been produced has also not been considered. I do not find any substance in the contention of the learned counsel for the respondents that the petitioner had not prayed for producing those documents. The respondents should have produced those documents because those are the basic documents on which the charge against the petitioner has been framed.

6. The petitioner has been removed from service only on the basis of certain information received by the respondents from the Railway authorities. It is true that those documents have been given to the petitioner, but none of the officers from the Railways has been examined by the respondents in the inquiry to prove those documents. Further, the petitioner has been deprived of his right to cross-examine those witnesses. By cross-examining those witnesses the petitioner could have established his defence. No explanation is forthcoming from the respondents why those persons have not been examined. Looking to the nature of the charge, where there is possibility of travelling by the petitioner peace-meal can't be ruled out, relying on the documents and letters received from the Railway authorities may result in prejudicing the defence of the petitioner. These aspects have not been considered by the disciplinary authority. Over and above this, the grievance of the petitioner that extreme penalty of removal from service is disproportionate to the guilt or excessive has also not been considered. This court, sitting under Article 226 of the Constitution of India, has a very limited power on the question of quantum of punishment to be given to a delinquent for a proved misconduct. In such a case the disciplinary authority should have considered this aspect which, in the present case, has not been considered. Taking into consideration the totality of the facts of the case, I am satisfied that the disciplinary authority has not acted fairly and reasonably in deciding the matter. The points raised by the petitioner in reply to the show cause notice were not given due consideration and further the disciplinary authority has not gone on the question of quantum of punishment to be given to the petitioner.

7. In the result this writ petition is partly allowed. The order of respondent No.2, dated 15-2-1986, produced at annexure-F to the petition, is quashed and set aside. The respondent authorities are directed to decide the matter afresh, after giving an opportunity of personal hearing to the petitioner, if he so desired. It is open to the petitioner to submit further reply to the show cause notice, if he so desires. Rule made absolute in the aforesaid terms. No order as to costs.

. . . . . .